

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

AMERITECH INFORMATION SYSTEMS, INC.¹

Employer

and

LOCAL UNION NO. 21, INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO

Petitioner

Case 13-UC-340

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, the Employer on June 23, 1999, filed with the undersigned a Motion to Dismiss Petition or, in the Alternative, For an Order Requiring the Petitioner to Show Cause Why an Additional Hearing is Necessary. The Employer asserted that all material factual issues had already been fully litigated in Cases 13-UC-328 and 13-UC-332. Thereafter, on June 30, 1999, the undersigned issued an Order to an Order to Show Cause why the undersigned should not dismiss the instant petition or, in the alternative, issue a decision based upon the facts presented in Cases 13-UC-328 and 13-UC-332. The Petitioner, on July 19, 1999, filed a response to the Order to Show Cause, agreeing that the record in Cases 13-UC-328 and 13-UC-332 was sufficient to decide the issues raised in the instant petition and that an additional hearing was unnecessary. Accordingly, the record from the hearing in Cases 13-UC-328 and 13-UC-332 serves as the record in the instant case.² On July 21, 1999, an order issued setting a time for the filing of briefs in the instant proceeding.

Pursuant to the provisions of Section 10(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴

2. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. In September 1998, the Petitioner was formed by the merger of Locals 165, 188, 336, 383, 399,

¹ The name of the Employer appear as amended by the parties stipulation.

² The hearing in cases 13-UC-328 and 13-UC-332 was held on 15 days in February-September 1998. The Decision and Order in those cases issued on December 18, 1998.

³ The arguments advanced by the parties at the hearing in cases 13-UC-328 and 13-UC-332 and in their briefs in the instant case have been carefully considered.

⁴ The Employer provides telecommunications products and services in a 5-state area. Its gross annual revenues exceed \$1 million; its annual revenues received across state lines exceed \$50,000.

International Brotherhood of Electrical Workers, AFL-CIO, the constituent members of Council T-4, IBEW.

3. The Employer and the Petitioner are parties to a collective-bargaining agreement in effect from June 1, 1998 through December 31, 2000. The bargaining unit covered by that collective-bargaining agreement consists of employees with the job classification of Technician. The Scope of Work Clause states that the collective-bargaining agreement covers all employees engaged in the installation, maintenance, repair and service of business communications, electronics and sound equipment. The petition in the instant case was filed on December 10, 1998 stating that the Union seeks to add employee-technicians performing programming, diagnostic, maintenance and repair work on telephone customer premise equipment via remote access from a site at 95 Algonquin Road in Arlington Heights, IL and other sites unknown and at various customer locations within the jurisdiction and scope of work of the union.

FACTS

The Petitioner seeks to add a number of employees to unit encompassed by the collective-bargaining agreement currently in effect. It is unclear, however, from the petition and the Petitioner's brief exactly which classifications it seeks to add to the bargaining unit. From its brief, it appears that the Petitioner wishes to add, at a minimum, the classification of Customer Technical Support Engineers (CTSEs) who perform what is known as remote diagnostics to the unit of technicians. The Petitioner may also be seeking to add several other classifications including Central Repair Answer Agents who fall under the category of Customer Operations Specialist (COS), the employees who staff the customer help desks who fall under either the COS or CTSE category, the employees who staff the call center help desk, and the Centrex Mate Support group who are CTSEs. All of these employees work at the Employer's Integrated Service Center (ISC) currently located at 95 West Algonquin Road in Arlington Heights, Illinois. It is not necessary to resolve this confusion, however, in light of the undersigned's finding that accretion and unit clarification is not appropriate in the circumstances found herein.

In 1988, at the time Ameritech Information Systems Inc. (the Employer or AIS) was created, Illinois Bell Communication (IBC) was a separate corporation. IBC sold, implemented and serviced non-network based systems known as Customer Premise Equipment (CPE) systems. Upon the formation of AIS, IBC became a division of that entity. In 1994, AIS was restructured into Custom Business Services (CBS) and Enhanced Business Services (EBS). At that point, IBC stopped functioning and was absorbed in the restructuring. CBS and EBS, as divisions of AIS, are parties to the current collective-bargaining agreement at issue in the instant case.

The duties and functions of the petitioned-for employees are set forth in the Decision and Order in cases 13-UC-328 and 13-UC-332 at pages 10 through 13. It is unnecessary to repeat that information here inasmuch as the record has not been supplemented. The employees in the existing bargaining unit perform installation and maintenance work on CPE systems, such as PBX (Private Branch Exchange). They are dispatched from a center located in Brookfield, Wisconsin. They do not share supervision with the petitioned-for employees. If the petitioned-for employees (particularly, the CTSEs) cannot fix a problem remotely, the technicians are dispatched to the facility or the potential source of the problem.

The current collective-bargaining agreement includes a Memorandum of Agreement entitled, "Work Preservation" which appears to be the basis for filing the instant petition. That memorandum states that the installation, MACs (moves, adds and changes), and maintenance work previously performed by the technical job titles that were covered by the collective-bargaining agreement in force between IBC and IBEW Locals 336 and 399 will continue to be the work of the technical job titles, included in the current collective-bargaining agreement which is to be amended to include such job titles and business units that perform the work. The Petitioner argues that the unrepresented employees whom it is seeking are performing unit work and that, pursuant to the collective-bargaining agreement and particularly, the Memorandum of Agreement, these employees should be represented by Petitioner through accretion.

ANALYSIS

As a threshold issue, the petition in the instant case is untimely. The Board refuses to clarify a unit in the middle of a contract term when the objective is to change the composition of a contractually agreed-upon unit by the exclusion or inclusion of employees. The Board has found that to grant the petition at such a time would be disruptive of the parties' bargaining relationship. *Edison Sault Electric Co.*, 313 NLRB 753 (1994); *Arthur C. Logan Memorial Hospital*, 231 NLRB 778 (1977). A unit, however, may be clarified midterm where employees are performing a new operation or to determine supervisory status of certain classifications. See, e.g., *Crown Cork and Seal Co.*, 203 NLRB 171 (1973); *Western Colorado Power Co.*, 190 NLRB 564 (1971). The Board will also entertain UC petitions shortly after a contract is executed where the parties could not reach agreement on the disputed classification and the petitioner did not exchange its position on the classification for concessions in negotiations. *St. Francis Hospital*, 282 NLRB 950 (1987).

In the instant case, the collective-bargaining agreement term runs from January 1, 1998 through December 31, 2000. Further, the record evidence does not reveal any facts indicating that any of the Board's exceptions apply. The employees at issue here are not performing new operations nor are they part of a new classification. Indeed, the record shows that these employees were in place for some time prior to the effective date of the current collective-bargaining agreement.⁵ As such the petition is fatally flawed from its filing on December 10, 1998.

Moreover, even if the petition were timely, accretion is not appropriate in this case inasmuch as it involves a work assignment dispute. Unit clarification petitions should be

⁵ In the previous proceeding in Cases 13-UC-328 and 13-UC-332, I found that the petitions were not untimely as they were filed prior to the culmination of the current collective bargaining agreement. In the instant case, however, the petition was filed subsequent to the execution of the current collective bargaining agreement. While the disputed classifications herein were, at least initially, disputed in the prior proceeding before being withdrawn by the Petitioner (see, footnote 20 at page 10 of the previous Decision), the record contains no reservation of the issue of their unit placement which occurred prior to the execution of the current collective bargaining agreement to preserve those issues, notwithstanding the negotiation of a new collective bargaining agreement.

dismissed where the core issue raised is work assignment which is not a proper matter for consideration and resolution in a representation proceeding. *Coatings Application and Waterproofing Company*, 307 NLRB 806 (1992); *The Gas Service Company*, 140 NLRB 445, 447 (1963). As in cases 13-UC-328 and 13-UC 332, the crux of the Union's argument here lies in the fact that non-unit employees are performing what it believes is unit work. Indeed, even the Memorandum of Agreement upon which the petition is, in part, based is entitled, "Work Preservation." The Union argues that the Board's adherence to the dismissal of UC petitions based on work assignment disputes is flawed because UC petitions always involve work functions assigned to unrepresented personnel such that few, if any, unit clarifications could ever take place. That argument is overstated. The Board has refused to clarify units where the *core* issue is work assignment. Clearly, UC cases may arise from any number of circumstances, such as from the creation of new classifications or operations, which are not based solely on work assignment as is the case here. In short, the facts of the instant case do not warrant a departure from established Board law and practice of refraining from clarifying units due to work assignment disputes.

Next, even if the petition were not inappropriate due to its timing or reliance on a work assignment dispute, the employees sought simply should not be accreted to the unit. Accretion effectively denies the accreted employees the opportunity to choose representation. Accordingly, the Board strictly limits the circumstances in which accretion will be permitted. The employees sought to be accreted must have an overwhelming community of interest such that they have lost their separate identity and do not constitute a separate unit. *Gitano Group, Inc.*, 308 NLRB 1172, 1174 (1992); *Super Valu Stores*, 283 NLRB 134, 136 (1987); *Melbet Jewelry Co.*, 180 NLRB 107, 109-110 (1969). The Board examines a number of factors in arriving at a determination of the appropriateness of accretion including: the degree of operational integration between the additional employees and the preexisting unit, including such facts as employee interchange and contact among the employees of the two groups; similarities in the skills, functions, interests and working conditions of the employees; their bargaining history; and the degree of common supervision and control. *Super Valu Stores*, supra, at 136-137. The Board has noted that employees interchange, as well as common day-to-day supervision, is especially important in a finding of accretion. *Gitano*, supra.

Although the record is somewhat scant regarding what the unit employees do, it is clear that the petitioned-for employees do not share a sufficient community of interest with them. The record shows no interchange among the unit and petitioned-for employees. Further, the supervision of these groups of employees is separate. Also, no bargaining history for the petitioned-for employees exists. Although the two groups of employees work towards the same goal of solving customer problems, they do so in different ways. The petitioned-for employees attempt to meet customer requests by remotely accessing systems. The unit employees do so in a more hands-on fashion. This commonality in purpose is insufficient to demonstrate the necessary overwhelming community of interest.

In sum, I find that the petitioned-for employees should not be accreted to the preexisting unit because the petition was filed during the term of the collective-bargaining agreement, the essential issue in the case is a work assignment dispute, and no overwhelming community of interest exists between the petitioned-for employees and the unit employees.

ORDER

IT IS HEREBY ORDERED that the petition in the above matter be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **October 7, 1999**.

DATED September 23, 1999 at Chicago, Illinois.

/s/ Elizabeth Kinney _____
Regional Director, Region 13

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